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7 CITIFINANCIAL RETAIL SERVICES and  
CITIBANK USA, NATIONAL  
8 ASSOCIATION

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA

11 KENNETH E. SMITH,  
12 Plaintiff,

13 vs.

14 CITIFINANCIAL; CITIBANK USA, NA;  
TRANS UNION, LLC, EQUIFAX  
15 INFORMATION SERVICES, LLC and  
EXPERIAN INFORMATION SOLUTIONS,  
16 INC.,

17 Defendants.

Case No.: 4:06-cv-02966-CW

**STIPULATION RE  
CONFIDENTIALITY AND  
PROTECTIVE ORDER WITH  
RESPECT TO PRODUCTION OF  
DOCUMENTS AND THINGS**

18  
19 1. PURPOSES AND LIMITATIONS

20 Disclosure and discovery activity in this action are likely to involve production of  
21 confidential, proprietary, or private information for which special protection from public  
22 disclosure and from use for any purpose other than prosecuting this litigation would be warranted.  
23 Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated  
24 Protective Order. The parties acknowledge that this Order does not confer blanket protections on  
25 all disclosures or responses to discovery and that the protection it affords extends only to the  
26 limited information or items that are entitled under the applicable legal principles to treatment as  
27 confidential. The parties further acknowledge, as set forth in Section 10, below, that this  
28 Stipulated Protective Order creates no entitlement to file confidential information under seal;

Civil Local Rule 79-5 sets forth the procedures that must be followed and reflects the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Party: any party to this action, including all of its officers, directors, employees, consultants, retained experts, and outside counsel (and their support staff).

2.2 Disclosure or Discovery Material: all items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures or responses to discovery in this matter.

2.3 “Confidential” Information or Items: information (regardless of how generated, stored or maintained) or tangible things that qualify for protection under standards developed under F.R.Civ.P. 26(c).

2.4 “Highly Confidential - Attorneys’ Eyes Only” Information or Items: extremely sensitive “Confidential Information or Items” whose disclosure to another Party or nonparty would create a substantial risk of serious injury that could not be avoided by less restrictive means.

2.5 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

2.6 Producing Party: a Party or non party that produces Disclosure or Discovery Material in this action.

2.7 Designating Party: a Party or non party that designates information or items that it produces in disclosures or in responses to discovery as “Confidential” or “Highly Confidential - Attorneys’ Eyes Only.”

2.8 Protected Material: any Disclosure or Discovery Material that is designated as “Confidential” or as “Highly Confidential - Attorneys’ Eyes Only.”

2.9. Outside Counsel: attorneys who are not employees of a Party but who are retained to represent or advise a Party in this action.

2.10 House Counsel: attorneys who are employees of a Party.

1           2.11 Counsel (without qualifier): Outside Counsel and House Counsel (as well as their  
2 support staffs).

3           2.12 Expert: a person with specialized knowledge or experience in a matter pertinent to  
4 the litigation who has been retained by a Party or its counsel to serve as an expert witness or as a  
5 consultant in this action and who is not a past or a current employee of a Party or of a competitor  
6 of a Party's and who, at the time of retention, is not anticipated to become an employee of a Party  
7 or a competitor of a Party's. This definition includes a professional jury or trial consultant  
8 retained in connection with this litigation.

9           2.13 Professional Vendors: persons or entities that provide litigation support services  
10 (e.g., photocopying; videotaping; translating; preparing exhibits or demonstrations; organizing,  
11 storing, retrieving data in any form or medium; etc.) and their employees and subcontractors.

### 12           3. SCOPE

13           The protections conferred by this Stipulation and Order cover not only Protected Material  
14 (as defined above), but also any information copied or extracted therefrom, as well as all copies,  
15 excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by  
16 parties or counsel to or in court or in other settings that might reveal Protected Material.

### 17           4. DURATION

18           Even after the termination of this litigation, the confidentiality obligations imposed by this  
19 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order  
20 otherwise directs.

### 21           5. DESIGNATING PROTECTED MATERIAL

22           5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party  
23 or non party that designates information or items for protection under this Order must take care to  
24 limit any such designation to specific material that qualifies under the appropriate standards. A  
25 Designating Party must take care to designate for protection only those parts of material,  
26 documents, items, or oral or written communications that qualify so that other portions of the  
27 material, documents, items, or communications for which protection is not warranted are not  
28 swept unjustifiably within the ambit of this Order.

1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are  
2 shown to be clearly unjustified, or that have been made for an improper purpose (e.g., to  
3 unnecessarily encumber or retard the case development process, or to impose unnecessary  
4 expenses and burdens on other parties), expose the Designating Party to sanctions.

5 If it comes to a Party's or a non party's attention that information or items that it  
6 designated for protection do not qualify for protection at all, or do not qualify for the level of  
7 protection initially asserted, that Party or non party must promptly notify all other parties that it is  
8 withdrawing the mistaken designation.

9 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order  
10 (see, e.g., second paragraph of section 5.2(a), below), or as otherwise stipulated or ordered,  
11 material that qualifies for protection under this Order must be clearly so designated before the  
12 material is disclosed or produced.

13 Designation in conformity with this Order requires:

14 (a) for information in documentary form (apart from transcripts of depositions  
15 or other pretrial or trial proceedings), that the Producing Party affix the legend  
16 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" at the top  
17 of each page that contains protected material. If only a portion or portions of the material on a  
18 page qualifies for protection, the Producing Party also must clearly identify the protected  
19 portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each  
20 portion, the level of protection being asserted (either "CONFIDENTIAL" or "HIGHLY  
21 CONFIDENTIAL - ATTORNEYS' EYES ONLY").

22 A Party or non party that makes original documents or materials available for  
23 inspection need not designate them for protection until after the inspecting Party has indicated  
24 which material it would like copied and produced. During the inspection and before the  
25 designation, all of the material made available for 'inspection shall be deemed "HIGHLY  
26 CONFIDENTIAL - ATTORNEYS' EYES ONLY." After the inspecting Party has identified the  
27 documents it wants copied and produced, the Producing Party must determine which documents,  
28 or portions thereof, qualify for protection under this Order, then, before producing the specified

documents, the Producing Party must affix the appropriate legend (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”) at the top of each page that contains Protected Material. If only a portion or portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each portion, the level of protection being asserted (either “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”).

(b) for testimony given in deposition or in other pretrial or trial proceedings, that the Party or non party offering or sponsoring the testimony identify on the record, before the close of the deposition, hearing, or other proceeding, all protected testimony, and further specify any portions of the testimony that qualify as “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” When it is impractical to identify separately each portion of testimony that is entitled to protection, and when it appears that substantial portions of the testimony may qualify for protection, the Party or non party that sponsors, offers, or gives the testimony may invoke on the record (before the deposition or proceeding is concluded) a right to have up to 20 days to identify the specific portions of the testimony as to which protection is sought and to specify the level of protection being asserted (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY”). Only those portions of the testimony that are appropriately designated for protection within the 20 days shall be covered by the provisions of this Stipulated Protective Order.

(c) for information produced in some form other than documentary, and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY.” If only portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portions, specifying whether they qualify as “Confidential” or as “Highly Confidential - Attorneys’ Eyes Only.”

1           5.3     Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to  
2 designate qualified information or items as “Confidential” or “Highly Confidential - Attorneys’  
3 Eyes Only” does not, standing alone, waive the Designating Party’s right to secure protection  
4 under this Order for such material. If material is appropriately designated as “Confidential” or  
5 “Highly Confidential - Attorneys’ Eyes Only” after the material was initially produced, the  
6 Receiving Party, on timely notification of the designation, must make reasonable efforts to assure  
7 that the material is treated in accordance with the provisions of this Order.

8           6.     CHALLENGING CONFIDENTIALITY DESIGNATIONS

9           6.1     Timing of Challenges. Unless a prompt challenge to a Designating Party’s  
10 confidentiality designation is necessary to avoid foreseeable substantial unfairness, unnecessary  
11 economic burdens, or a later significant disruption or delay of the litigation, a Party does not  
12 waive its right to challenge a confidentiality designation by electing not to mount a challenge  
13 promptly after the original designation is disclosed.

14          6.2     Meet and Confer. A Party that elects to initiate a challenge to a Designating  
15 Party’s confidentiality designation must do so in good faith and must begin the process by  
16 conferring directly with counsel for the Designating Party. In conferring, the challenging Party  
17 must explain the basis for its belief that the confidentiality designation was not proper and must  
18 give the Designating Party an opportunity to review the designated material, to reconsider the  
19 circumstances, and, if no change in designation is offered, to explain the basis for the chosen  
20 designation. A challenging Party may proceed to the next stage of the challenge process only if it  
21 has engaged in this meet and confer process first.

22          6.3     Judicial Intervention. A Party that elects to press a challenge to a confidentiality  
23 designation after considering the justification offered by the Designating Party may file and serve  
24 a motion under Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable)  
25 that identifies the challenged material and sets forth in detail the basis for the challenge. Each  
26 such motion must be accompanied by a competent declaration that affirms that the movant has  
27 complied with the meet and confer requirements imposed in the preceding paragraph and that sets  
28

1 forth with specificity the justification for the confidentiality designation that was given by the  
 2 Designating Party in the meet and confer dialogue.

3 The burden of persuasion in any such challenge proceeding shall be on the Designating  
 4 Party. Until the court rules on the challenge, all parties shall continue to afford the material in  
 5 question the level of protection to which it is entitled under the Producing Party's designation.

6 7. ACCESS TO AND USE OF PROTECTED MATERIAL

7 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed  
 8 or produced by another Party or by a non party in connection with this case only for prosecuting,  
 9 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only  
 10 to the categories of persons and under the conditions described in this Order. When the litigation  
 11 has been terminated, a Receiving Party must comply with the provisions of section 11, below  
 12 (FINAL DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a location and  
 14 in a secure manner that ensures that access is limited to the persons authorized under this Order.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise  
 16 ordered by the court or permitted in writing by the Designating Party, a Receiving Party may  
 17 disclose any information or item designated CONFIDENTIAL only to:

18 (a) the Receiving Party's Outside Counsel of record in this action, as well as  
 19 employees of said Counsel to whom it is reasonably necessary to disclose the information for this  
 20 litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached  
 21 hereto as Exhibit A;

22 (b) the officers, directors, and employees (including House Counsel) of the  
 23 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have  
 24 signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

25 (c) experts (as defined in this Order) of the Receiving Party to whom  
 26 disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be  
 27 Bound by Protective Order" (Exhibit A);

28 (d) the Court and its personnel;

(e) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A). Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated Protective Order.

(g) the author of the document or the original source of the information.

7.3 Disclosure of "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY"

Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY" only to:

(a) the Receiving Party's Outside Counsel of record in this action, as well as employees of said Counsel to whom it is reasonably necessary to disclose the information for this litigation and who have signed the "Agreement to Be Bound by Protective Order" that is attached hereto as Exhibit A;

(b) Experts (as defined in this Order) (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A);

(c) the Court and its personnel;

(d) court reporters, their staffs, and professional vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Agreement to Be Bound by Protective Order" (Exhibit A); and

(e) the author of the document or the original source of the information.



1           8.     PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN  
2                   OTHER LITIGATION.

3           If a Receiving Party is served with a subpoena or an order issued in other litigation that  
4 would compel disclosure of any information or items designated in this action as  
5 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS’ EYES ONLY,” the  
6 Receiving Party must so notify the Designating Party, in writing (by fax, if possible) immediately  
7 and in no event more than three court days after receiving the subpoena or order. Such  
8 notification must include a copy of the subpoena or court order.

9           The Receiving Party also must immediately inform in writing the Party who caused the  
10 subpoena or order to issue in the other litigation that some or all the material covered by the  
11 subpoena or order is the subject of this Protective Order. In addition, the Receiving Party must  
12 deliver a copy of this Stipulated Protective Order promptly to the Party in the other action that  
13 caused the subpoena or order to issue.

14           The purpose of imposing these duties is to alert the interested parties to the existence of  
15 this Protective Order and to afford the Designating Party in this case an opportunity to try to  
16 protect its confidentiality interests in the court from which the subpoena or order issued. The  
17 Designating Party shall bear the burdens and the expenses of seeking protection in that court of its  
18 confidential material and nothing in these provisions should be construed as authorizing or  
19 encouraging a Receiving Party in this action to disobey a lawful directive from another court.

20           9.     UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

21           If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected  
22 Material to any person or in any circumstance not authorized under this Stipulated Protective  
23 Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the  
24 unauthorized disclosures, (b) use its best efforts to retrieve all copies of the Protected Material, (c)  
25 inform the person or persons to whom unauthorized disclosures were made of all the terms of this  
26 Order, and (d) request such person or persons to execute the “Acknowledgment and Agreement to  
27 Be Bound” that is attached hereto as Exhibit A.

1           10.    FILING PROTECTED MATERIAL.

2           Without written permission from the Designating Party or a court order secured after  
3 appropriate notice to all interested persons, a Party may not file in the public record in this action  
4 any Protected Material. A Party that seeks to file under seal any Protected Material must comply  
5 with Civil Local Rule 79-5.

6           11.    FINAL DISPOSITION.

7           Unless otherwise ordered or agreed in writing by the Producing Party, within sixty days  
8 after the final termination of this action, each Receiving Party must return all Protected Material  
9 to the Producing Party. As used in this subdivision, "all Protected Material" includes all copies,  
10 abstracts, compilations, summaries or any other form of reproducing or capturing any of the  
11 Protected Material. With permission in writing from the Designating Party, the Receiving Party  
12 may destroy some or all of the Protected Material instead of returning it. Whether the Protected  
13 Material is returned or destroyed, the Receiving Party must submit a written certification to the  
14 Producing Party (and, if not the same person or entity, to the Designating Party) by the sixty day  
15 deadline that identifies (by category, where appropriate) all the Protected Material that was  
16 returned or destroyed and that affirms that the Receiving Party has not retained any copies,  
17 abstracts, compilations, summaries or other forms of reproducing or capturing any of the  
18 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival  
19 copy of all pleadings, motion papers, transcripts, legal memoranda, correspondence or attorney  
20 work product, even if such materials contain Protected Material. Any such archival copies that  
21 contain or constitute Protected Material remain subject to this Protective Order as set forth in  
22 Section 4 (DURATION), above.

23           12.    MISCELLANEOUS

24           12.1   Right to Further Relief. Nothing in this Order abridges the right of any person to  
25 seek its modification by the Court in the future.

26           12.2   Right to Assert Other Objections. By stipulating to the entry of this Protective  
27 Order no Party waives any right it otherwise would have to object to disclosing or producing any  
28 information or item on any ground not addressed in this Stipulated Protective Order. Similarly,

1 no Party waives any right to object on any ground to use in evidence of any of the material  
2 covered by this Protective Order.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 SO STIPULATED.

5 DATED: January 31, 2007

SEVERSON & WERSON  
A Professional Corporation

8 By:

/s/ Regina J. McClendon

10 Attorneys for Defendants  
CITIFINANCIAL RETAIL SERVICES and  
11 CITIBANK USA, NATIONAL ASSOCIATION

13 DATED: February 5, 2007

KEMNITZER, ANDERSON, BARRON &  
14 OGILVIE

16 By:

/s/ Andrew Ogilvie

18 Attorneys for Plaintiff  
KENNETH E. SMITH

20 IT IS SO ORDERED.

21 2/8/07

22 Dated: \_\_\_\_\_



United States District Court Judge

**EXHIBIT A**

**NONDISCLOSURE AGREEMENT**

I, \_\_\_\_\_, do solemnly swear that I am fully familiar with the terms of the Stipulation Re: Protective Order With Respect to Production of Documents and Things agreed upon by the Parties [and the Order, if approved] in *Kenneth E. Smith v. CitiFinancial, et al.*, United States District Court, Northern District of California Case No. 4:06-cv-02966-CW, and hereby agree to comply with and be bound by the terms and conditions of such Stipulation [and Order, if entered] unless and until modified by further Order of this Court. I hereby consent to the jurisdiction of said Court for purposes of enforcing this Stipulation [and Order, if entered].

Dated: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name